

## REMARKS

Upon entry of the present Response, no claims will have been amended or cancelled. Accordingly, claims 1-11 will remain pending in the present application, and are presently under rejection.

In the outstanding Official Action, the Examiner rejected claims 1-11 under 35 U.S.C. § 103(a) as being unpatentable under OUCHI (U.S. Patent No. 6,767,349) in view of RYDELL (U.S. Patent No. 5,035,696) and further in view of the teaching of WEAVER et al (U.S. Patent No. 5,536,248). Applicant respectfully traverses the above rejection and submits that it is not applicable to the claims in the present application.

In particular, Applicant notes that the OUCHI reference relied upon by the Examiner is not available as a reference against the claims in the present application under 35 U.S.C. § 103(c).

In this regard, Applicant notes that OUCHI is the primary reference relied upon by the Examiner. OUCHI is noted to be assigned to Pentax Corporation and the present application is also noted to be assigned to Pentax Corporation. Moreover, at the time the claimed invention was made, the subject matter of OUCHI and of the claimed invention were owned or subject to an obligation of assignment to the same person (entity).

Additionally, the inventorship of the present application is different than the inventorship of the OUCHI patent.

Further, Applicant notes that the present application was filed on July 16, 2003, but the OUCHI patent issued on July 27, 2004. Thus, the OUCHI patent is available as prior art against the claims of the present application based upon its filing date of

February 28, 2002. In other words, it is available as a reference only under 35 U.S.C. § 102(e).

Accordingly, since all of the requirements of 35 U.S.C. § 103(c) have been satisfied, it is respectfully submitted that OUCHI is not available as a reference against the claims in the present application.

Accordingly, Applicant respectfully requests reconsideration and withdrawal of the outstanding rejection together with an indication of the allowability of all the claims pending in the present application. Such action is respectfully requested and is now believed to be appropriate and proper.

Moreover, should the Examiner reopen prosecution and change the rejection from being based upon Patent No. 6,767,349 to OUCHI to being based upon the related published OUCHI application, Applicant submits that the same is still not available as a reference against the claims in the present application.

In this regard, the present application which was filed on July 16, 2003 in the United States is entitled, based upon the Claim of Priority filed in the present application, to an effective filing date of July 29, 2002. Accordingly, the OUCHI publication, is not available as a reference against the claims in the present application under 35 U.S.C. § 102(a).

Should the Examiner consider utilizing the OUCHI publication, he is respectfully requested to contact the undersigned and Applicant will prepare and file a certified English language translation of his foreign priority document in order to antedate the availability of the OUCHI publication against the claims in the present application.

**SUMMARY AND CONCLUSION**

Applicant has made a sincere effort to place the present application in condition for allowance and believe that he has now done so. Applicant has discussed the Examiner's rejection and has shown that the primary reference relied upon by the Examiner is not available against the claims in the present application. Accordingly, Applicant has provided a clear evidentiary basis for the patentability of all the claims in the present application and respectfully request an indication to such effect in due course. Such action is respectfully requested and is now believed to be appropriate and proper.

Should the Examiner have any questions or comments regarding this paper or regarding the present application, the Examiner is respectfully requested to contact the undersigned at the below-listed telephone number.

Respectfully submitted,  
Satoshi KIDOOKA



Bruce H. Bernstein  
Reg. No. 29,027

William Pieprz  
Reg. No. 33,630

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GREENBLUM & BERNSTEIN, P.L.C.  
1950 Roland Clarke Place  
Reston, VA 20191  
(703) 716-1191